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<b>M.R., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0219</b>
	)	<b>Issued: May 25, 2022</b>
<b>DEPARTMENT OF VETERANS AFFAIRS, VA</b>	)	
<b>CARRIBEAN HEALTHCARE SYSTEM,</b>	)	
<b>San Juan, PR, Employer</b>	)	
_____	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 1, 2020 appellant filed a timely appeal from a June 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

<sup>2</sup> The Board notes that, following the issuance of the June 11, 2020 decision, OWCP and the Board received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include cervical, thoracic, and/or lumbar conditions as causally related to the accepted employment injury.

## **FACTUAL HISTORY**

On March 3, 2016 appellant, then a 57-year-old program support clerk, filed a notice of recurrence (Form CA-2a) alleging that, beginning July 29, 2013, she sustained a recurrence of disability of her January 22, 2001 employment-related injury, under OWCP File No. xxxxxx592.<sup>3</sup> By decision dated April 18, 2016, OWCP denied appellant's recurrence claim.<sup>4</sup>

On June 30, 2016 appellant filed an occupational disease claim (Form CA-2) alleging that she developed osteoarthritis, degenerative disc disease, radiculopathy, and several herniated discs of the cervical spine, as well as bilateral carpal tunnel syndrome (CTS) caused or aggravated by factors of her federal employment. She noted that, following a work-related traumatic injury, she was assigned clerical duties at the employing establishment's chapel, which involved ordering supplies and lifting boxes of supplies weighing about 50 pounds. Appellant noted that she first became aware of her conditions on March 1, 2012 and realized their relationship to her federal employment on July 29, 2013. OWCP assigned the claim OWCP File No. xxxxxx950.

Appellant submitted a June 14, 2016 medical report from Dr. Ivette Ostolaza, a family practitioner. Dr. Ostolaza noted a history of appellant's employment injuries. She reviewed diagnostic test results and performed an examination. Dr. Ostolaza diagnosed osteoarthritis, discogenic disc disease, multi-level herniated nucleus pulposus, and radiculopathy of the cervical spine, bilateral CTS; and cervical spondylosis with spinal canal stenosis and neural foramina narrowing at several levels. She opined that the diagnosed conditions were caused by appellant's repetitive and excessive work duties which became symptomatic on March 1, 2012. Dr. Ostolaza related that the cumulative trauma which was the result of many years of exposure to repetitive and excessive stress to the discs of the cervical spine caused the discs to compress and then eventually rupture. She further related that appellant's arthritis and osteoarthritis had been aggravated by repetitive motions of appellant's daily duties as instability of the spine, appeared as multilevel retrolisthesis, which could also be aggravated by repetitive load to the spine.

OWCP, in a November 7, 2016 development letter, informed appellant of the deficiencies of her occupational disease claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even

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<sup>3</sup> Under OWCP File No. xxxxxx592, appellant filed an occupational disease claim (Form CA-2) claiming for a cervical injury which arose on or before January 22, 2001. OWCP assigned that claim OWCP File No. xxxxxx592 and accepted it for aggravation of cervical myelopathy and aggravation of cervical herniated discs. OWCP has administratively combined OWCP File Nos. xxxxxx592 and xxxxxx950, with the former serving as the master file.

<sup>4</sup> Appellant subsequently requested reconsideration. By decision dated July 26, 2016, OWCP denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In response, appellant submitted a completed development questionnaire dated December 6, 2016 wherein she described her employment duties of receiving shipments twice a month of bibles, printer paper, song books, wine, and office supplies. She described lifting heavy boxes and objects, bending at the waist, delivering materials to six chaplains, and sitting at a desk at an angle for hours to view her computer monitor and to shred documents. Appellant noted that she had severe pain in her neck and hands prior to working at the church in 2002 and she experienced back pain which was aggravated by the above-noted work duties. Prior to 2002 she worked as a pharmacy technician at the employing establishment from 1986 through 2002, which involved repetitive movements such as, reaching above shoulder level to grab medications placed on high shelves, pulling and pushing medicine carts, bending up and down to pick up boxes, filling drawers, and preparing solutions.

Appellant submitted an additional report dated November 22, 2016, wherein Dr. Ostolaza diagnosed cervical disc disorder with myelopathy. Dr. Ostolaza reiterated her prior diagnoses of radiculopathy and spondylosis with myelopathy of the cervical region and bilateral CTS. She reviewed appellant's statement describing her work duties. Dr. Ostolaza repeated her prior opinion that appellant's diagnosed conditions were employment related. She indicated that appellant had a symptomatic response to the cumulative trauma resulting from many years of repetitive and excessive stress to the cervical spine discs, which caused the discs to compress and eventually rupture. Dr. Ostolaza further indicated that appellant's condition was aggravated over the course of her employment mainly, by the repetitive duties she performed from 2002 through 2012. She maintained that these duties did not allow her condition to stabilize and, therefore, they aggravated her employment-related conditions. Dr. Ostolaza opined that this amount of continuous physical labor and repetitive movements over an extended period of time was the main contributing factor which accelerated her conditions of spondylosis, disc disorder, arthritis and osteoarthritis of the cervical spine. She noted that magnetic resonance imaging (MRI) scans demonstrated instability of the cervical spine and multilevel retrolisthesis, opining that this was aggravated by work activities. Dr. Ostolaza noted that this kind of instability could also be aggravated by repetitive loads to the cervical spine. She further noted that appellant had no other risk factors in her history that could be related to her cervical spine condition. Dr. Ostolaza also opined that appellant's bilateral CTS was aggravated by typing and sitting in an uncomfortable position up to six hours per day for 10 years along with lifting and grabbing. She indicated that appellant was a very small woman who had to place her hands up in a higher position to type for several hours. This factor along with lifting and grabbing activities increased strain on the wrists and caused swelling of the tendons around the tunnel. Dr. Ostolaza related that appellant had never previously suffered a sprain or trauma to the wrists.

In a December 8, 2016 letter, the employing establishment responded to OWCP's November 7, 2016 development letter, noting that appellant retired on August 8, 2014. It submitted sworn statements from N.F., appellant's supervisor, who noted that following appellant's 2001 employment injury, she accepted a detail assignment to the chaplain section in November 2002 on a temporary basis for two years. In June 2004 appellant accepted the employing establishment's job offer for a permanent position as a program support clerk with her physician's concurrence.

On June 19, 2017 OWCP accepted appellant's claim for right upper limb CTS.

In a decision dated June 20, 2017, OWCP denied the expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish that the additional claimed medical conditions of aggravation of cervical disc disorder, cervical radiculopathy, left upper arm CTS, and aggravation of cervical spondylosis and cervical osteoarthritis were causally related to the accepted employment injury.

OWCP subsequently received medical reports dated July 3 and August 14, 2017 from Dr. Nelson Colon, a Board-certified physiatrist. Dr. Colon noted appellant's history of injury, performed an examination, and reviewed diagnostic test results. He provided assessments of chronic cervicalgia/myofasciitis/spasms; C5-6 disc herniations; chronic lumbago/myofasciitis/spasms; L4-S1 disc herniations; chronic right hand pain/carpal tunnel; and left hand pain. Dr. Colon opined that the diagnosed conditions were causally related to appellant's reported repetitive strain/overuse injuries. He further opined that she was totally disabled from work. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Colon reiterated his opinion regarding appellant's incapacity for work.

On May 14, 2018 appellant requested reconsideration of the June 20, 2017 decision and submitted additional medical evidence.

OWCP received cervical, lumbar, and thoracic spine and bilateral hip x-rays, an MRI scan, bone densitometry, electromyography/nerve conduction velocity (EMG/NCV) study reports dated June 30 and July 5, 2017, and March 13 and April 2, 2018 by Dr. Delfin Bernal, a diagnostic radiologist, Dr. Victor I. Aponte, a family practitioner, Dr. Alberto Middlehof-de Leon, a Board-certified physiatrist.

In notes dated November 28, 2017 to June 14, 2018, Dr. Yovin Vargas, a family practitioner, diagnosed right upper limb CTS and ordered medication and physical therapy treatment.

In an August 10, 2018 decision, OWCP denied modification of its June 20, 2017 decision, finding that the medical evidence submitted was insufficient to warrant expansion of the acceptance of appellant's claim to include the diagnosed cervical, thoracic, and lumbar conditions.

OWCP subsequently received notes dated July 12, September 6, October 25, and November 20, 2018 by Dr. Vargas who continued to diagnose the accepted condition of right upper limb CTS.

On October 30, 2018 appellant requested reconsideration and submitted additional medical evidence. In an October 16, 2018 report, Dr. Tomas Hernandez-Ortiz, a neurologist, noted that OWCP had accepted appellant's claim for cervical spondylosis with myelopathy and cervical intervertebral disc disease with myelopathy. He diagnosed additional disabling conditions of osteoarthritis, herniated disc (C6-7) with radiculopathy, cervical myelopathy at several levels, bilateral CTS, and right thoracic outlet syndrome. Dr. Hernandez-Ortiz described appellant's work duties which involved lifting and carrying boxes of bibles, and printer paper weighing up to 20 pounds, cases of wine and binder cases weighing up to 15 pounds, occasionally going up stairs

with these boxes, and storing items on a shelf with a maximum height of 7.5 feet. He related that her current conditions were detected in earlier studies and showed a steady worsening of the objective findings. Dr. Hernandez-Ortiz maintained that this was in accord with appellant's steadily deteriorating clinical condition. He further maintained that the laudable efforts to place appellant in a reasonable accommodation status were defeated when she was forced to perform jobs with moderate-to-strenuous physical demands. Dr. Hernandez-Ortiz indicated that she was a victim of the "axial loading" process of the spine that is produced by forward flexion of the spine (cervical and lumbar) for less than 45 degrees while lifting weights of no more than 20 pounds in the process. This maneuver favors the development of both cervical and lumbar disc disease due to the frequency that it is performed. Dr. Hernandez-Ortiz noted that these conditions are mostly seen in secretaries, nurses, physician assistants, laboratory, and pharmacy workers such as, appellant. He indicated that these jobs require the partial forward flexion of the spine and lifting not so heavy objects. It is considered to be a cumulative trauma disorder. Dr. Hernandez-Ortiz advised that appellant's present cervical condition was more likely than not a progression of her accepted conditions.

By decision dated January 24, 2019, OWCP denied modification of its August 10, 2018 decision.

OWCP continued to receive notes dated November 29, 2018 to June 6, 2019 by Dr. Vargas addressing appellant's accepted right upper limb condition and physical treatment.

On June 18, 2019 appellant requested reconsideration and submitted additional medical evidence. In a March 25, 2019 report, Dr. Hernandez-Ortiz referenced the cervical, lumbar, and left-hand diagnoses contained in Dr. Colon's August 14, 2017 report. He noted that Dr. Colon's report failed to mention appellant's additional work-related conditions of left C5 and bilateral C6 radiculopathies that corresponded to the herniated cervical discs; anterolisthesis of C4 over C5 and C3; grade 1 spondylolisthesis of L3 over L4-S1 radiculopathies secondary to a herniated L5-S1 disc; and bilateral CTS. Dr. Hernandez-Ortiz related that most spondylolistheses were degenerative in nature, but they could be influenced and worsened by certain maneuvers such as, hyperextension in all spine areas. He noted that according to appellant's job description, this was very likely to happen with the hyper-extensive spine movement she repeatedly performed while handling heavy parcels in high places, either by placing or retrieving them. Dr. Hernandez-Ortiz indicated that the spine was one entity that was artificially divided into three areas, to wit, cervical, thoracic, and lumbosacral for the sake of convenience in classification of illnesses involving the spine. Due to its flexibility and wide range of motion in several directions, the cervical spine is more frequently the first affected area, followed by the lumbar region due to its weight-bearing characteristics and finally the thoracic portion due to its relative lack of mobility when compared to other areas. When cervical spine disease is present, it is usually followed by involvement of other areas as happened with appellant after her original accident. Dr. Hernandez-Ortiz advised that the thoracic and lumbar intervertebral disc diseases were more likely than not a progression of the original cervical lumbar intervertebral disc disease's involvement.

OWCP received additional prescription notes by Dr. Vargas dated July 18, August 15, September 12, and October 17 and 18, 2019 regarding appellant's accepted right upper limb condition and treatment.

On August 15, 2019 OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Fernando Rojas, a Board-certified orthopedic surgeon, for a second opinion to determine whether appellant had any additional conditions caused or aggravated by her accepted employment injuries.

In a September 9, 2019 lumbar spine MRI scan report, Dr. Liana Medina, a Board-certified diagnostic radiologist, provided an impression of degenerative disc changes at L4-5 with bulging of the annulus fibrosus and a small posterior annular fissure. She also provided an impression of found slight degenerative changes of the disc at L5-S1 and L2-3 with bulging of the annulus fibrosus. In a cervical spine MRI scan report of even date, Dr. Medina noted impressions of muscle spasm and degenerative disc changes at C3-4, C4-5, C5-6, and C6-7. Additionally, she noted an impression of left lateral herniated disc at C5-6.

OWCP received a September 17, 2019 thoracic spine MRI scan report by Dr. Rene Dietrich Ormachea, a diagnostic radiologist, which indicated degenerative discs with central disc herniation at T9-10, and degenerated discs at T7-9.

In a September 27, 2019 report, Dr. Rojas reviewed the SOAF and medical record. He noted the history of appellant's employment injuries and her complaints of neck and right-hand pain, loss of strength in both upper extremities, and headaches. Dr. Rojas reported normal findings on examination of the neck and both shoulders. He found pain on the dorsum of the wrist when he performed a Tinel's sign on the right side, but there was no real Tinel's sign with radiation to the thumb and index finger. A Tinel's sign on the left was negative. There were no sensory deficits noted. There was full range of motion of all digits. On examination of the lumbar spine, Dr. Rojas reported a flattening of the spine with loss of lordosis, but there were soft paraspinal muscles. Appellant had forward flexion to 20 degrees. She could not go beyond 0 degrees. Bilateral bending to the right was only to 10 degrees and 25 degrees to the left. Dr. Rojas reviewed the September 12, 2019 EMG/NCV study and related that it may have shown sensory right carpal tunnel syndrome, but he could not elicit such findings on his physical examination. Thus, he advised that appellant did not suffer from disabling residuals of her employment-related right CTS. Dr. Rojas noted, however, that the EMG/NCV study revealed sensory disturbance. He advised that no further medical treatment was needed because appellant's right CTS was mild. Dr. Rojas further reasoned that she did not have a motor component included. He doubted whether appellant had full-blown CTS, which would have required surgical intervention. Dr. Rojas noted that she had not aggravated a preexisting condition, but she was totally disabled from work due to her preexisting lumbar osteoarthritis and cervical disc disease. There were no objective findings of current disability. Dr. Rojas opined that appellant could return to her sedentary program support clerk and carry up to 10 pounds of small amounts of materials. He noted appellant's claim that her position required her to lift up to 50 pounds. Dr. Rojas, however, indicated that the SOAF and position description he reviewed only required her to lift "small piles of small weight." He maintained that appellant's cervical and lumbar spine herniated discs were not work related, but rather degenerative in nature, because she was not required to perform heavy lifting. In a Form OWCP-5c dated October 3, 2019, Dr. Rojas reiterated his opinion regarding appellant's work capacity and noted her permanent work restrictions.

In an October 21, 2019 decision, OWCP denied modification of its January 24, 2019 decision, finding that the weight of the medical evidence rested with Dr. Rojas' September 27,

2019 opinion that appellant did not sustain additional medical conditions caused or aggravated by her employment.

In a September 12, 2019 report, Dr. Kathya E. Ramos-Vargas, a Board-certified physiatrist, observed that an EMG/NCV study of the upper extremities was abnormal. She found electrophysiologic evidence of a right median nerve entrapment neuropathy at the wrist affecting only the sensory component of the nerve, which was clinically consistent with right CTS of mild severity. There was no evidence of focal median nerve entrapment at the wrist (CTS) on the left. There was evidence of left C6 radiculitis, circumscribed to the dorsal rami (paraspinal muscles only). There was no evidence of a generalized neuropathic process or right cervical radiculopathy. In a September 26, 2019 report, Dr. Ramos-Vargas indicated that an EMG/NCV study of appellant's lower extremities was normal.

OWCP, by decision dated June 11, 2020, denied modification of its October 21, 2019 decision.

### **LEGAL PRECEDENT**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>5</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>6</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.<sup>7</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.<sup>8</sup>

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>9</sup> OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>10</sup>

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<sup>5</sup> *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>6</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>7</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

<sup>10</sup> 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

## ANALYSIS

The Board finds that this case is not in posture for decision.

On June 14 and November 22, 2016 Dr. Ostolaza reviewed appellant's employment injuries and a description of her work duties and diagnosed: osteoarthritis, discogenic disc disease, multi-level herniated nucleus pulposus, and radiculopathy of the cervical spine; bilateral CTS; cervical spondylosis with spinal canal stenosis and neural foramina narrowing at several levels; and cervical disc disorder with myelopathy. She opined that appellant's diagnosed conditions were caused and/or aggravated by the repetitive and excessive work duties she had performed from 2002 to 2012. Dr. Ostolaza explained why the diagnosed conditions were causally related to appellant's employment.

On July 3 and August 14, 2017 Dr. Colon provided assessments of chronic cervicalgia/myofasciitis/spasms; C5-6 disc herniations; chronic lumbago/myofasciitis/spasms; L4-S1 discs herniations; chronic right hand pain/carpal tunnel syndrome; and left hand pain. He opined that the diagnosed conditions were causally related to appellant's reported repetitive strain/overuse injuries and that she was totally disabled from work.

On October 16, 2018 and March 25, 2019 Dr. Hernandez-Ortiz diagnosed additional disabling conditions of osteoarthritis, herniated disc (C6-7) with radiculopathy, cervical myelopathy at several levels, bilateral CTS, and right thoracic outlet syndrome. He reviewed appellant's job description and opined that the diagnosed conditions were caused by her work duties. Dr. Hernandez-Ortiz also provided a detailed explanation of the causal relationship between appellant's conditions and her employment.

OWCP referred appellant to Dr. Rojas for a second opinion examination. In a September 27, 2019 report, Dr. Rojas found that Dr. Ramos-Vargas' September 12, 2019 EMG/NCV study may have shown sensory right carpal tunnel syndrome, but he observed no such findings on physical examination. He noted that, contrary to her contention that she was required to lift up to 50 pounds, his review of the SOAF and her position description indicated that she was only required to lift up to 10 pounds. Dr. Rojas found that the additional diagnosed conditions were not employment related, but rather were degenerative in nature, as she was not required to perform heavy lifting.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an impartial medical examiner (IME) who shall make an examination.<sup>11</sup> The Board, therefore, finds that a conflict exists between Dr. Rojas and Drs. Ostolaza, Colon, and Hernandez-Ortiz regarding expansion of the acceptance of appellant's claim to include additional conditions causally related to the accepted employment injuries.

On remand, OWCP shall prepare an updated SOAF to clarify the weight of the boxes and supplies appellant was required to lift or carry in her position as a program support clerk. It shall thereafter refer appellant to an IME, pursuant to 5 U.S.C. § 8123(a), to determine whether the

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<sup>11</sup> See S.S., Docket No. 19-1658 (issued November 12, 2020); C.S., Docket No. 19-0731 (issued August 22, 2019).



acceptance of her claim should be expanded to include the additional diagnosed conditions.<sup>12</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 25, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> See *L.C.*, Docket No. 20-0866 (issued February 26, 2021); *S.N.*, Docket No. 19-1050 (issued July 31, 2020); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).